

Measuring Business Opportunity: Disparity Study of NCDOT's State and Federal Programs

Summary of Findings by Dr. Thomas D. Boston, March 17, 2010

Purpose of Disparity Study: To assist NCDOT in complying with State Statutes and Federal Regulations governing MBE/WBE and DBE Programs in State supported and federally assisted highway contracts. The regulations are as follows:

- (1) N.C.G.S.A. 136 –28.4; the State policy regarding the participation of MBE/WBEs
- (2) 49 C.F.R. Part 26; the Federal Regulation governing the participation of DBEs in federally supported transportation projects.

Organization of the Disparity Study: The study consists of an Executive Summary and four volumes containing the following information:

1. Economic and statistical analyses of contracting activity between FY2004 and FY2008 (including centrally let prime and subcontracts for Federal and State aid projects; Small Business Enterprise (SBE) contracts; and Purchase Order Contracts.
2. Qualitative evidence collected through anecdotal interviews, focus groups, public hearings, and vendor surveys.
3. A legal analysis and review of relevant case law

General Finding:

NCDOT has implemented the State and Federal Programs in accordance with governing statutes and regulations.

NCDOT has continued to narrowly tailor its State and Federal Programs in accordance with legal and regulatory requirements. It has also implemented a large number of race- and gender-neutral programs and policies. The most notable are the SBE Program and 13 programs operated by the BOWD Office. Those programs focus on outreach, training, technical assistance and financial assistance.

The evidence indicates that had NCDOT not used race-and gender-conscious MWBE and DBE policies (to supplement race-and gender-neutral policies) there would have been a significant disparity in awards received by qualified, willing and able minorities and women contractors. For example, despite the large number of race- and gender-neutral programs enacted, those policies accounted for only 2.6 percentage points of the 9.4% of all awards

received by MWBEs. In the Federal Program, race- and gender-neutral awards accounted for 1.7 percentage points of the 8.0% of all awards received by DBEs.

Major Economic and Statistical Findings:

State Program Findings:

1. The 2008 MWBE goal in the State Program =11%
2. Awards to MWBEs over the study period =9.4% (or \$228.8 million)
3. MBEs awards = 4.7%; WBE awards = 4.7%
4. MBE estimated capacity = 7.1%; WBE estimated capacity = 8.0%
5. Subcontract awards by Race & ethnicity: Blacks = 10.0%, Native Americans = 5.9%, Hispanics =.6% and Asians = .1%.

(Note that firms were coded by race/ethnicity group status independently of their MWBE certification status. Hence, award percentage by race and ethnicity may exceed award percentage by MBE status)

Federal Program Findings:

6. The 2008 DBE goal in the Federal Program =10.1%
7. Awards to DBEs over the study period = 8% (or \$228.5 million)
8. Total awards to firms with MBE status= 1.7%; WBE status = 6.2%
9. MBE estimated capacity = 7.1%; WBE estimated capacity = 8.0%
10. Subcontract awards by Race/ethnicity: Blacks = 2.7%, Native Americans =.1%, Hispanics =.2% and Asians = .2%.

SBE Program Findings:

11. Awards to MWBEs = 20.3% (\$29.4 million)
12. MBEs = 7.5%; WBEs = 15.8%
13. Awards by race/ethnicity: Blacks=11.2%, Native Americans=4.7%, and Hispanics =.7%.

Purchase Order Contracts

14. Awards to MWBEs = .7% (\$3.6 million)
15. MBEs = .4%; WBEs = .4%

Other Findings

- The largest share of awards received by MWBEs was generated through centrally let State subcontracts-- 33.2% (13.6% MBE and 18.3% WBE). Likewise, the largest share of awards received by DBEs was through centrally let Federal subcontracts (5.2% MBE and 19.2% WBE).
- In the State Program, the awards received by MBEs and WBEs were more balanced than they were in the Federal Program, but those awards were significantly lower than was the capacity of MBEs and WBEs.
- In the Federal program, WBEs received much larger share of all awards than did MBEs, but again the awards received by WBEs and MBEs (operating as DBEs in the State program) were significantly lower than was their capacity).
- MWBE and DBE centrally let prime contract awards were a very small percentage (2.4%) of centrally let State contracts and .2% of Federal contracts. This reflected both the lower capacity of minority- and women-owned firms as well as disparities that could not be explained by differences in their capacity.
- The SBE program was very effective at achieving a significant level of MWBE utilization in a race-neutral manner. However, SBE awards accounted for a relatively small amount of all awards to MWBEs (\$29.4 million).
- Disparities in POCs could not be explained in the study and likely reflect data quality problems. Additionally, the qualitative evidence collected by the disparity study team indicates that the greatest number of critical comments made by minority vendors centered on their contracting experiences at the Division level.
- The disparity study found that the MWBE and DBE goals were narrowly tailored, flexible and waived when warranted. The Goal Compliance Committee was effective at evaluating good-faith efforts
- In general, the MWBE and DBE Programs operated efficiently, had extensive documentation and maintained very detailed data that allowed a thorough examination of MWBE and DBE activity.

Recommendations

- NCDOT should continue to implement and expand the broad range of race-and gender-neutral programs it operates, continue making innovations to such programs and in particular, continue to focus on capacity building.

- An effort should be made to determine why minority firms are so underutilized in the Federal Program in comparison to their utilization in the State Program. Consider adopting in the Federal Program those State policies that have proven to be effective.
- Continue to implement training sessions for contracting officers at the Division level. Establish more consistency among Divisions in goal setting, good faith efforts compliance and in informal bid solicitations and contract awards.
- Continue to expand the SBE Program to more areas of contracting and consider raising the cap on SBE awards.
- A preliminary examination suggested that trucking and hauling may have become over-concentrated with MBEs and WBEs through various practices including the following: subcontract goal setting, prime contractor practices and the failure of MWBEs to diversify. MBEs and WBEs comprised respectively 24.1% and 15.3% of all available firms in the industry. However they received 47.0% and 32.9% of awards. NCDOT should investigate this industry and if it is over-concentrated, develop options to address the problem such as reducing the credit awarded to firms that achieve goals in this area. Such policy changes should be accompanied by efforts to reposition MWBEs operating in the industry.
- When prime contractors voluntarily use MWBEs in a race-neutral manner, they must comply with the same regulations that govern race-conscious utilization of MWBEs. This can be a disincentive to prime contractors. Therefore, this policy should be re-evaluated and tailored to achieve the same objective in a more efficient manner.